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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

JOSHUA B. FISHER, Petitioner and Respondent, v. AMORA R. FISHER, Appellant.	B288263 (Los Angeles County Super. Ct. No. BD632742)

APPEAL from an order of the Superior Court of Los Angeles County, Lawrence P. Riff, Judge. Affirmed.

Amora R. Fisher, in pro. per., for Appellant.

Gay Family Law Center, Angelyn Gates and Michael Bialys for Petitioner and Respondent.

Acting in propria persona, Amora Fisher appeals from an order requiring her to produce objection–free discovery by a date certain, and to pay $6,200 in sanctions for unsuccessfully opposing a motion to compel discovery responses filed by her estranged husband, Joshua Fisher.[1]

Amora's 31–page opening (and only) brief is difficult to comprehend and several claims are largely unintelligible. To the extent we can ascertain them, Amora's arguments may be distilled to three principal contentions of error. First, she argues that Joshua's Request for Order to Compel Discovery Responses and Seeking Monetary Sanctions (RFO, or motion to compel), was procedurally defective and predicated on fraud, and that the order granting that motion was the result of judicial bias. Second, Amora maintains that the order requiring her to provide objection–free discovery responses violated the work product doctrine and invaded the privacy of uninvolved third parties. Third, she contends that the court erred in granting Joshua's RFO, brought at a time when Joshua himself was in violation of various

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[1] Appellant is the respondent in the underlying dissolution proceedings in which respondent Joshua Fisher is the petitioner. To avoid confusion due to the parties' postures on appeal, and because they share a surname, we refer to appellant and respondent as Amora and Joshua, respectively. We intend no disrespect.

court orders. Only the first two contentions are properly before us, and each lacks merit.[2] Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Our factual recitation and discussion are limited to the assertions of error regarding a January 31, 2018 order granting Joshua's RFO and imposing monetary sanctions against Amora for unsuccessfully opposing that motion to compel.

On May 27, 2017, Joshua propounded interrogatories and a request for documents to Amora. Amora's written responses were due on June 29, 2017. Amora sought an extension of time to respond to discovery so she could study for and take the California Bar exam. On June 8, 2017, the court granted that request, ordered that "[Amora] does not have to respond to pending discovery at this time" and ordered the parties to return in September. On September 19, 2017, the trial court lifted the discovery stay and, among other things, ordered Amora "to respond to all pending served discovery no later than 11/17/17."

On December 22, 2017, Joshua filed the RFO at issue here seeking to compel Amora's discovery responses and attorney fees as a sanction for her refusal to comply with the court's September 19, 2017 order.

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[2] This appeal is from a single court order requiring Amora to provide discovery responses by a date certain, and pay sanctions for unsuccessfully opposing a motion to compel. No appeal was brought from any order related to Amora's remaining contentions of error, which are beyond our scope of review.

According to the declaration of Kate Gillespie, then Joshua's attorney, Amora failed to serve any discovery responses by November 17, 2017. On December 4, 2017, Gillespie mailed a "meet and confer" letter informing Amora that her discovery responses were past due, and requesting that they be provided by December 8, 2017.

On December 11, 2017, Amora responded to Gillespie's letter with an email stating that "[she had] timely sent [her] response[s]" to Joshua's written discovery, but would "resend" them as "a courtesy." In Gillespie's December 11 response to that email, she reiterated that she had not received any discovery responses, and requested that Amora "immediately comply with [Gillespie's] December 4, 2017 Meet and Confer letter should [she] wish to avoid sanctions." By return email on December 11, Amora objected to Gillespie's characterization of the December 4, 2017 letter as a "meet and confer" and asked Gillespie to "reach out" if she wished to "meet and confer." However, Amora promised again to "resend . . . a copy" of the responses.

The RFO, scheduled for hearing on January 31, 2018, was served on Amora on January 2, 2018. In a declaration filed in support of the RFO, Gillespie testified that she had not received Amora's discovery responses, and requested $6,200 in sanctions as compensation for time her firm devoted to the RFO. In a subsequent declaration, Gillespie informed the court that, as of January 24, 2018, Amora had not provided discovery responses, nor had she filed a response to the RFO. Gillespie requested that the trial court refuse to consider any untimely

opposition to the motion to compel Amora might later submit, and deny her an opportunity to argue at the hearing.

On January 29, 2018, the trial court denied Amora's ex parte request for an extension of time to respond to discovery and to continue the RFO hearing until she could retain new counsel. Although not all documents bear a file stamp, it appears that Amora filed voluminous documentation on January 30, 2018, including an opposition to the RFO, written responses to Joshua's discovery, and a request for judicial notice of an October 31, 2017, proof of service by mail of her purportedly timely responses.

On January 31, 2018, a hearing was conducted on the RFO.[3] At the outset the court observed it had discretion to deny Amora the opportunity to argue in response to the RFO for failing timely to respond to that motion, but nevertheless permitted her to do so. At (or just before) that hearing, Amora produced a copy of an October 31, 2017, proof of service by mail of her responses to Joshua's written discovery. Gillespie informed the court that she had never before seen the proof of service. The trial court stated that it believed that Gillespie never received Amora's discovery responses. It noted it had intended to grant the RFO, to the extent that Amora be ordered to produce discovery responses by a date certain, but deny sanctions. The court

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[3] The minute order indicates the hearing was conducted on January 30. However, the reporter's transcript indicates it took place on January 31, a fact on which the parties agree.

observed that it was "stunning" that, as late as January 2018, it was conducting a hearing on a motion to compel discovery propounded in May 2017, to which Amora had been given about six months to respond. However, in light of the just–produced proof of service indicating that Amora's responses were timely, the court indicated that its intention now was to deny the RFO (to the extent that Joshua requested objection–free responses).

Gillespie objected. She argued that the court should grant the RFO and was statutorily required to impose sanctions based on Amora's failure to timely oppose the motion to compel. Gillespie also informed the court that she had reviewed the responses Amora provided that morning and that Joshua still lacked necessary information to proceed to trial. Gillespie informed the court that Amora's interrogatory responses were inadequate and evasive, and she had not produced any requested documents.

The hearing was adjourned briefly to permit the court to "read[] and consider[]" the papers. When the hearing reconvened, the court stated that it was obligated to "follow the law, and the law is that there was no response [by Amora to the RFO] timely filed," and the motion to compel should not have been necessary. The court granted the RFO, ordered Amora to provide objection–free responses to Joshua's written discovery by February 23, 2018, and imposed $6,200 in sanctions. Gillespie was ordered to prepare a proposed order, serve it on Amora for approval as to form and content and submit the proposed order for the court's signature. At the conclusion of the hearing—and despite the

trial court's express denial of her request to do so in court—Amora "served" Gillespie with the duplicates of discovery responses (replete with objections) she had purportedly served in October 2017. The record contains no indication that Amora ever complied with the trial court's order to provide objection–free responses by February 23, 2018.

On February 9, 2018, Amora filed a Notice of Appeal from the January 31, 2018 "order." Also on February 9, 2018, Amora filed a Motion for Reconsideration (MFR) of the ruling on the RFO and imposition of sanctions. The MFR was scheduled for hearing on March 28, 2018.

The court's order reflecting its January 31, 2018 ruling was entered on March 12, 2018.

At the March 28, 2018, hearing on the MFR, the trial court concluded that it lacked jurisdiction to consider the motion because Amora had perfected an appeal. (Code Civ. Proc., § 916.)[4]

DISCUSSION

Amora contends that the trial court erred in requiring her to produce objection–free responses to outstanding discovery, and

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[4] The notice of appeal filed February 9, 2018—after the trial court announced an intended ruling but before entry of the order—was premature. (See Cal. Rules of Court, rule 8.104(c)(2).) We treat the notice of appeal as timely filed upon entry of the March 12, 2018 order. (Cal. Rules of Court, rule 8.104(d)(2); see *Castillo v. Glenair, Inc.* (2018) 23 Cal.App.5th 262, 275.)

imposing monetary sanctions for her untimely and unsuccessful opposition to the RFO to compel.

1. *Controlling Law*

A. *Fundamental Procedural Principles*

Before addressing Amora's specific contentions, we note that it is a fundamental rule of appellate review that a trial court's order or judgment is presumed correct, and the appellant bears the burden to demonstrate prejudicial error. "All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) To satisfy her burden and overcome the presumption of correctness, the appellant must provide an adequate record demonstrating the claimed error, and failure to do so requires that the issue be resolved against her. (See *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295; *Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416 ["'if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed"'].)

Moreover, all contentions of error asserted in appellant's brief must include coherent analysis and discussion, supported by pertinent authority reflecting the logical and legal analysis by which the appellant reached the conclusions she urges us to adopt. (*Berger v. California Ins. Guarantee Assn.* (2005) 128 Cal.App.4th 989, 1007.) Appellant's arguments must "be tailored according to the applicable

standard of appellate review." (*Sebago, Inc. v. City of Alameda* (1989) 211 Cal.App.3d 1372, 1388), and failure to do so may be considered a concession that an assertion lacks merit. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1021.) An appellant may not evade or shift her responsibility in this regard, by placing on this Court the burden to discover on its own unassisted review of the record, weakness in a respondent's arguments. (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 102.)

Finally, it is of no moment that Amora is now and has been self–represented at various times during this litigation. (See *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985; *Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543.) Amora's pro. per. status does not excuse her from adherence to governing law and rules of civil procedure. (See *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246–1247 (*Nwosu*).) She is entitled to "'the same, but no greater consideration than other litigants and attorneys.'" (*Id.* at p. 1247; *Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638–639 [pro. per. litigants are bound by the same restrictive rules of procedure and evidence as attorneys—no different, no better, no worse].)

B. *Civil Discovery Rules and Sanctions*

The Civil Discovery Act (Code Civ. Proc., § 2016.010 et seq.[5]) includes several provisions authorizing the trial court's imposition of monetary sanctions. Those provisions include section 2031.320, which

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[5] Further statutory references are to the Code of Civil Procedure.

states, "the court *shall impose* a monetary sanction . . . against any party . . . who unsuccessfully . . . opposes a motion to compel compliance with a demand [for inspection], unless it finds that the one subject to the sanction acted with *substantial justification* or that other circumstances make the imposition of the sanction unjust." (§ 2031.320, subd. (b), italics added.) In such circumstances, the unsuccessful party must pay the reasonable expenses, including attorney fees, incurred by the successful party. (§ 2023.020; see also §§ 2023.010, subds. (e), (f), (g), (h) & (i), 2023.030, subd. (a), 2031.300, subd. (c).) The same rule applies to a party's failure to respond to a motion to compel interrogatory responses. (See §§ 2023.010, subds. (e), (f), (g), (h) & (i), 2023.030, subd. (a), 2030.290, subd. (c).) Further, the trial court is vested with broad discretion to sanction a party for misusing the discovery process, which includes "opposing, unsuccessfully and without substantial justification, a motion to compel," and "[f]ailing to confer . . . in a reasonable and good faith attempt to resolve informally any dispute concerning discovery." (§ 2023.010, subds. (h) & (i).) A sanctions award will be upheld on appeal unless the trial court's decision was "arbitrary, capricious, whimsical" or exceeded "'"the bounds of reason. . . ."' [Citation.]" (*In re Marriage of Chakko* (2004) 115 Cal.App.4th 104, 108.)

A motion to compel discovery requests must "be accompanied by a meet and confer declaration under Section 2016.040." (§§ 2031.310, subd. (b)(2), 2030.300, subd. (b).) The meet and confer declaration submitted "in support of a motion shall state facts showing a reasonable

and good faith attempt at an informal resolution of each issue presented by the motion." (§ 2016.040.) It is a misuse of the discovery process to "[fail] to confer . . . in a reasonable and good faith attempt to resolve informally any dispute concerning discovery, if the section governing a particular discovery motion requires the filing of a declaration stating facts showing that an attempt at informal resolution has been made." (§ 2023.010, subd. (i).) Moreover, "[n]otwithstanding the outcome of the particular discovery motion, the court shall impose a monetary sanction ordering that any party or attorney who fails to confer as required pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct." (§ 2023.020.) A request for sanctions must specify the type of sanction sought and be "accompanied by a declaration setting forth facts supporting the amount of any monetary sanction sought." (§ 2023.040.)

2. *Amora's Opposition to the Motion to Compel was Unsuccessful*

Amora's opposition to the RFO to compel was not filed until the day before argument on that motion. Although Amora belatedly provided purported proof that her discovery responses were timely, Joshua's counsel testified—and the court believed—that she had not received any discovery responses before or after the court–ordered deadline. Gillespie also stated that she made a good faith effort informally to resolve the matter by alerting Amora on December 4 and 11, 2017 to the fact that she had not received her discovery responses, and requesting that they be provided forthwith. Although Amora

claimed her responses had already timely been served, she twice told Gillespie she would "resend" them. Nevertheless, Gillespie received nothing from Amora before the January 31, 2018 hearing. The trial court expressly stated that it believed Gillespie.

In addition, Amora failed to meet and confer in connection with, and failed timely or successfully to oppose, the RFO.[6] Thus, the court was required to impose monetary sanctions, absent a finding that she acted with substantial justification or that sanctions were otherwise unjust. (§§ 2023.030, subd. (a), 2030.290, subd. (c), 2031.300, subd. (c).) Substantial evidence supports the court's implied conclusion that Amora did not act with substantial justification, and sanctions were not unjust. The trial court gave Amora an extraordinarily generous amount of time to respond to Joshua's May 2017 discovery. Twice in December, after opposing counsel informed Amora that she had not received any discovery responses by the court's November 17 deadline, Amora expressly promised to "resend" them. She did not do so. As a result Joshua's counsel was forced to file the RFO to compel production of documents and information she deemed critical to resolution of the disputes to be litigated at trial.

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[6] There is no merit to Amora's myopic assertion that Gillespie failed to "meet and confer" simply because Gillespie attempted to do so in her December 4 and 11, 2017 written communications. (See § 2023.010, subd. (i) [sanctionable conduct includes failing to meet and confer "*by letter* with an opposing party or attorney in a reasonable and good faith attempt to resolve informally any dispute concerning discovery" (italics added)].)

Although she did not resend the responses as promised, and did not file a timely opposition to the RFO, Amora proffered documents at the January 31, 2018 hearing purportedly proving her discovery responses were timely. The court exercised its discretion and took the proof of service into account. However, Gillespie informed the court that the responses Amora provided at the hearing were incomplete and evasive, and no requested documents were produced. The court recessed the hearing to review the documents. Upon its return, the court found that Amora had not satisfied her statutory obligations.

Absent a finding that the compelled party acted with substantial justification or that other circumstances would render the imposition of sanctions unjust, subdivisions (c) of sections 2030.020 and 2031.300 mandate that sanctions be imposed when a party who has failed to serve timely responses unsuccessfully defends a motion to compel. Here, Amora neither timely nor successfully opposed the motion to compel. And, even after the court permitted Amora to argue in opposition to the RFO, she provided no relevant authority or factual basis demonstrating that her conduct was substantially justified or that sanctions would be unjust. Accordingly, the trial court acknowledged that it was required to impose sanctions. Amora has not shown that order was made in error.[7]

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[7] Nor did Amora argue or make any evidentiary showing of judicial bias.

3. *Amora Has Not Shown that the Court's Order Violated Any Privilege, Invaded Third Parties' Privacy or that it Was the Result of Fraud*

As appellant, Amora has the burden to present argument supported by relevant legal authority as to each contention of error. Satisfaction of this requirement involves more than simply stating a bare conclusion that the judgment, or any part of it, is erroneous and leaving it to the appellate court to figure out why. It is not our role to construct theories or arguments that would undermine the judgment and defeat the presumption of correctness. (*Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368.) If an appellant asserts a point but fails to support it with argument and citations to relevant evidence and authority, we may treat the point as waived. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; *EnPalm, LLC v. Teitler* (2008) 162 Cal.App.4th 770, 775 [issue deemed waived where appellants failed to support claim with argument, discussion, analysis, or citation to the record, or to include trial proceedings in the record].)

Relying primarily on sparse and inapplicable federal authority, Amora contends that Joshua's discovery requests called for privileged information, violated the privacy of third parties, and that the court's order was "based on fraud, frivolous, harassing & bad faith conduct by" Joshua and his attorney. To the extent that she contests the scope of discovery requests propounded in May 2017, the time for such a challenge has passed. There is no indication that Amora sought a protective order during (or after) the six months allotted to claim the requests violated any privilege, invaded anyone's privacy, or that the

discovery or motion to compel were the result of fraud, harassment or brought in bad faith. Amora's vague assertions and largely unintelligible legal arguments do not advance her cause. Again, Amora's pro. per. status does not exempt her from the rules of appellate procedure or relieve her obligation to present intelligible argument supported by the record and applicable legal authority. (*Nwosu, supra,* 122 Cal.App.4th at pp. 1246–1247.) She has not pointed to any specific act or evidence to support her assertions. Further, Amora's assertions that Joshua, through his counsel, committed litigation abuse are refuted by the trial court's express observations and findings.[8]

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[8] Amora asserts, but points to no evidence, that Joshua was precluded from filing the motion to compel because he was himself in contempt of court. There is no indication in the record that Joshua was the subject of an order of contempt. This argument is beyond the scope of the instant appeal. Similarly, the remaining arguments raised in the opening brief are not properly before this court and/or sufficiently developed to be cognizable. We decline to consider them and treat them as forfeited. (See *Nwosu, supra,* 122 Cal.App.4th at pp. 1246–1247.)

DISPOSITION

The order is affirmed. Joshua is awarded his costs on appeal.

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WILLHITE, J.

We concur:

MANELLA, P. J.

CURREY, J.